OGC Has Reviewed

Chief, Services Division

31 May 1950

Legal Staff

25X1A [redacted]

1. Following our recent telephone conversation, I have again reviewed the file in this case and the proposed letter to [redacted] 25X1A [redacted] regarding the hourly rates indicated in the contract and those actually charged.

2. It is our understanding that the basic rate in mind was a maximum of $200.00 per month. Fiscal broke this down to an hourly rate of $1.15, computed in accordance with the description in your letter of 14 March 1950 to [redacted] In a letter dated 27 March 1950, [redacted] acknowledged the $1.15 rate and specifically agreed to make their accounting practices conform. [redacted] has now discovered that they have incurred excessive charges in the amount of $200.00, apparently as the result of salary payments computed at $1.25 per hour rather than $1.15, although the maximum $200.00 monthly has not been exceeded. Invoices were returned to [redacted] for correction of the actual number of hours worked, and no payment has yet been made.

3. Whatever the inchoate intent of the parties may have been in reaching an agreement on the compensation to be allowed, the contract is explicit on its face and we find it difficult to avoid the wording of Article 2 a., specifying $1.15 per hour. If it is possible to supplement the file with additional proof that neither of the parties intended the $1.15 rate to apply except as a fiscal mechanic in reaching a $200.00 maximum, the contract could conceivably be submitted to the General Accounting Office for reformation. However, we should like to point out that we feel it would be difficult, if not impossible, to develop such proof. The contract is clear and its terms were accepted by [redacted] - not only through execution of the agreement itself, but also in the subsequent letter of [illegible] March 1950.

4. The Government has a pleading obligation running in its favor here, and as the Comptroller General pointed out in his opinion of 26 Comp. Gen. 413, page 420: "It is a long established rule that agents and officers of the Government have no authority to give away the money or property of the United States, to waive contractual rights which have accrued to the United States, or modify existing contracts without a compensating benefit to the Government, and nothing appears here to justify or authorize a departure from that rule." In that particular case advanced labor rates under a lump-sum contract were disallowed. Here, there is a binding obligation on the Contractor. Without further consideration running to the Government, there would

not appear to be grounds for relief in the absence of clear error or misunderstanding. In any event, the proper person to make the determination would not be the Contracting Officer, but the General Accounting Office, as the Comptroller pointed out in his opinion of 15 Comp. Gen. 238 in a case where reformation was sought on the basis of a mutual mistake. To quote: "* Administrative officers of the Government are without authority to reform contracts under which the United States has obtained vested rights as in the instant case. Reformation of contracts is a judicial, and not an administrative function, and may be effected only when the established facts fully justify such action.* With respect to obligations of, and those in favor of, the United States, however, the jurisdiction being in the accounting officers of the Government to make final settlement, the procedure has long been and operates to save the cost and delay of litigation, on submission to them of the facts fully justifying, to authorize adjustments having a like effect." The file, in its present condition, does not warrant submission to the GAO.

5. As we have pointed out verbally, any hardship on the Contractor or his employees can still be avoided. Since the Contractor has indicated that the actual number of hours worked was not properly computed, and since there is no limitation to a 40-hour workweek, the invoices could be revised to reflect the actual number of hours worked at a $1.15 rate. Subject to the $200.00 monthly limit, we presume this would absorb the expense which could not be allowed at $1.25 per hour on a 40-hour week.

25X1A

[redacted]

25X1A

[redacted]

cc: Subject
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Legal Decisions